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MIKE GRAVEL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**WHITNEY S. GRAVEL and
MIKE GRAVEL,**

Plaintiffs,

vs.

**VOLKSWAGEN GROUP OF AMERICA,
INC., a New Jersey corporation, d/b/a
VOLKSWAGEN OF AMERICA, INC.,
MATHEW ENTERPRISE, INC., a
California Corporation, d/b/a
SERRAMONTE VOLKSWAGEN, and
DOES 1 through 10, inclusive,**

Defendants.

Case No.: 3:17-CV-01415

Unlimited Jurisdiction

FIRST AMENDED COMPLAINT

- 1. FRAUD IN THE INDUCEMENT -
INTENTIONAL
MISREPRESENTATION**
- 2. FRAUD IN THE INDUCEMENT -
CONCEALMENT**
- 3. VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT**
- 4. VIOLATION OF THE SONG-
BEVERLY ACT – BREACH OF
IMPLIED WARRANTY**

1 Plaintiffs, WHITNEY S. GRAVEL and MIKE GRAVEL, allege as follows against
2 Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, d/b/a
3 VOLKSWAGEN OF AMERICA, INC., MATHEW ENTERPRISE, INC., a California Corporation,
4 d/b/a SERRAMONTE VOLKSWAGEN, and DOES 1 through 10 inclusive, on information and
5 belief, formed after an inquiry reasonable under the circumstances:

6
7 **DEMAND FOR JURY TRIAL**

8 1. Plaintiffs, WHITNEY S. GRAVEL and MIKE GRAVEL, hereby demand trial by
9 jury in this action.

10
11 **GENERAL ALLEGATIONS**

12 2. Plaintiffs, WHITNEY S. GRAVEL and MIKE GRAVEL (“PLAINTIFFS”), are
13 individuals residing in the City of Burlingame, County of San Mateo, State of California.

14 3. Defendant, VOLKSWAGEN GROUP OF AMERICA, INC., d/b/a VOLKSWAGEN
15 OF AMERICA, INC., (hereafter “Volkswagen” or “Defendant”), is and was a New Jersey
16 corporation registered to do business in the State of California with its registered office in the City
17 of Sacramento, County of Sacramento, State of California.

18 4. Defendant, MATHEW ENTERPRISE, INC., d/b/a SERRAMONTE
19 VOLKSWAGEN (hereafter “Dealer”), is and was a California Corporation registered to do business
20 in the State of California with its registered office in the City of Colma, County of San Mateo, State
21 of California.

22 5. Plaintiffs do not know the true names and capacities, whether corporate, partnership,
23 associate, individual or otherwise of Defendant issued herein as Does 1 through 10, inclusive, under
24 the provisions of section 474 of the Code of Civil Procedure. Defendant Does 1 through 10,
25 inclusive, are in some manner responsible for the acts, occurrences and transactions set forth herein,
26 and are legally liable to Plaintiffs. Plaintiffs will seek leave to amend this Complaint to set forth the
27 true names and capacities of the fictitiously named Defendants, together with appropriate charging
28 allegations, when ascertained.

1 14. Representations regarding fuel efficiency and emissions, as well as the vehicle's
2 reputation for maintaining a high resale value, induced Plaintiffs into purchasing the vehicle. Due
3 to the inclusion of the defeat device, however, the vehicle could not deliver the high performance
4 that was advertised, including the low emissions and fuel economy. As a result of Volkswagen's
5 conduct, Plaintiffs have suffered harm. Volkswagen's conduct is a direct and proximate cause of
6 Plaintiffs' damages. But for Volkswagen's fraudulent concealment of presence of the defeat device,
7 Plaintiffs would not have purchased the vehicle.

8
9 **Volkswagen's Plot to Illegally Circumvent California Emissions Regulations**

10 15. In or around 2005, following the success of environmentally friendly vehicles such
11 as the Toyota Prius, Volkswagen made the decision to focus on "clean" diesel technology to achieve
12 its market share of "green" vehicle consumers.

13 16. Volkswagen spent millions of dollars in research and development in the production
14 of the EA 189 TDI ("TDI" stands for "turbocharged direct injection") diesel engine.

15 17. At the time of development, diesel engines made up just 5% of the U.S. car market
16 and Volkswagen saw an opportunity to become the market leader through this so-called "clean"
17 diesel; however, in order to capitalize on the "green" vehicle market, Volkswagen needed to
18 overcome public stigma associated with diesel technology, which included the perception that diesel
19 engines emit high levels of toxic pollutants. With the TDI, Volkswagen claimed to have drastically
20 limited toxic emissions.

21 18. Volkswagen marketed the TDI as a "clean" diesel alternative to other
22 environmentally friendly green engines, such as hybrids and electric cars.

23 19. Behind the scenes, Volkswagen realized internally that it was not possible to roll out
24 these so-called "clean" diesel vehicles within its self-imposed budgets and engineering constraints.
25 Volkswagen mandated the development of a diesel engine that maintained the performance of
26 traditional gasoline engines with reduced CO₂ emissions and fuel consumption, all while meeting
27 the strict NO_x emission standards in California.

28 ///

1 20. NO_x is a generic term for the mono-nitrogen oxides NO and NO₂ (nitric oxide and
2 nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen gases
3 in the air during combustion. NO_x is produced by the burning of fossil fuels, but it is particularly
4 difficult to control from the burning of diesel fuel. NO_x is a toxic pollutant, which produces smog
5 and a litany of environmental and health problems, as detailed further below.

6 21. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer
7 hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can
8 convert over 45% of diesel's chemical energy into useful mechanical energy, whereas gasoline
9 engines convert only 30% of gasoline's energy into mechanical energy. To make use of this dense
10 diesel fuel, diesel engines combine under high pressure to ignite a combination of diesel fuel and air
11 through "compression ignition," as opposed to gasoline engines that typically use electric discharge
12 from a spark plug to ignite a combination of gasoline and air through "spark ignition." Though more
13 efficient, diesel engines come with their own set of challenges, as emissions from diesel engines can
14 include higher levels of NO_x and particulate matter ("PM"), or "soot" than emissions from gasoline
15 engines due to the different ways the different fuels combust and the different ways the resulting
16 emissions are treated following combustion. One way NO_x emissions can be reduced by adjusting
17 the compression and temperature, but that in turn produces PM, a similarly-undesirable
18 hydrocarbon-based emission. Another way NO_x emissions can be reduced is through expensive
19 exhaust gas after treatment devices, primarily, catalytic converters, that use a series of chemical
20 reactions to transform the chemical composition of a vehicle's NO_x emissions into less harmful,
21 relatively inert, and triple bonded nitrogen gas (N₂; just over 78% of the Earth's atmosphere by
22 volume consists of N₂) and carbon dioxide (CO₂).

23 22. Diesel engines thus operate according to this trade-off between price, NO_x and PM,
24 and for the California Air Resources Board ("CARB") to designate a diesel car as a "clean" vehicle,
25 it must produce both low PM and low NO_x.

26 23. California's strict emission standards posed a serious challenge to Volkswagen's
27 engineers. In fact, during a 2007 demonstration in San Francisco, the chief of the TDI's research
28 and development team, Wolfgang Hatz, lamented presciently that "[Volkswagen] can do quite a bit

1 and we will do a bit, but ‘impossible we cannot do . . . From my point of view, the [CARB standard]
2 is not realistic... I see it as nearly impossible for [Volkswagen].”

3 24. It was of the utmost importance to Volkswagen that it achieve (or at least appear to
4 achieve) this “impossible” goal, for it could not legally sell a single vehicle that failed to comply
5 with California emissions regulations.

6 25. California’s regulator, CARB, requires that automakers complete an application and
7 obtain an Executive Order (“EO”), confirming compliance with California’s emission regulations,
8 before allowing the vehicle onto California’s roads.

9 26. Thus, in order to successfully grow the U.S. Diesel market and meet its ambitious
10 objectives, it was critical that Volkswagen develop the technology to maintain the efficient, powerful
11 performance of a diesel, while drastically reducing NO_x emission to comply with California emission
12 standards.

13 27. This engineering dilemma led to a deep dilemma at Volkswagen that led to proposals
14 for two divergent exhaust gas after treatment technical approaches. One approach involved a
15 selective catalytic reduction (“SCR”) system that proved to be effective but expensive. The other,
16 which utilized a lean NO_x trap, was significantly cheaper but was less effective and resulted in lower
17 fuel efficiency.

18 28. The SCR system utilized the organic compound urea, a post-combustion emission
19 reductant generically referred to as “Diesel Exhaust Fluid” or “DEF.” When injected into the
20 exhaust stream in a catalyst chamber, urea converts NO_x into nitrogen gas, water, and carbon dioxide.
21 The SCR system was expensive, costing \$350 per vehicle, and came with other compromises,
22 including, primarily, the need for installation of a DEF tank that would require regular refills.
23 Volkswagen decided to drop the SCR system because the \$350 per-vehicle cost was deemed too
24 expensive.

25 29. The second strategy, the NO_x traps, involved the storage of NO_x emissions in a
26 catalyst substrate during vehicle operation. Once the substrate filled up, the system burned off the
27 stored NO_x by pumping an extra burst of fuel into the cylinders, most of which passed through to
28 the converter, where it then converts the NO_x into less harmful emissions. This method was cheaper

1 and easier to implement than the SCR system. The NO_x trap system was less effective at reducing
 2 emissions, however, and resulted in lower miles-per-gallon fuel efficiency, directly contradicting
 3 one of the key elements (high miles-per-gallon fuel efficiency) necessary to execute Volkswagen's
 4 ambitious diesel sales goals. Accordingly, this option, too, was unacceptable to Volkswagen.

5 30. But at Volkswagen, failure was not an option. According to many sources
 6 (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen's ranking
 7 officials directed its engineers to find a way to meet emissions standards, including those of
 8 California, despite tight budgetary and technical constraints, or suffer the consequences. For
 9 example, former CEO of Volkswagen Aktiengesellschaft, Ferdinand Piëch, created "a culture where
 10 performance was driven by fear and intimidation," and his leadership was characterized as a "reign
 11 of terror."¹ Employees were told, "[y]ou will sell diesels in the U.S., and you will not fail. Do it, or
 12 I'll find somebody who will." ² Piëch was infamous for firing subordinates who failed to meet his
 13 exacting standards: "Stories are legion in the industry about Volkswagen engineers and executives
 14 shaking in their boots prior to presentations before Piech, knowing that if he was displeased, they
 15 might be fired instantly."³ And so it seems, out of self-preservation, the defeat device was created.

16 31. Volkswagen engineers had to find a solution to the "impossible" problem of passing
 17 stricter emission standards while maintaining performance and fuel efficiency, all while hamstrung
 18 by cost-cutting measures. And it had to be done fast, because the new diesel vehicles were scheduled
 19 for imminent release in the U.S. Ultimately, Volkswagen ran out of time and instead of being honest
 20 and risk being fired, executives, engineers, and others conspired to cheat California emissions
 21 standards by installing a "defeat device" in the new diesel vehicles, including Plaintiffs' vehicle, so
 22 that those vehicles could "pass" CARB emission testing, and Volkswagen could obtain EOs to sell
 23 the vehicles to make its sales targets throughout California.

24 32. After it became clear that the TDI engine would not meet California emissions
 25 standards by the launch of the Jetta TDI "clean diesel," initially scheduled for 2007 but delayed due

26 ¹ Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, Road & Track (Nov. 4, 2015),
 27 <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

28 ² *Id.*

³ Doron Levin, *The Man Who Created VW's Toxic Culture Still Looms Large*, Fortune (Oct. 16, 2015),
<http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.

1 emission testing failure, Volkswagen decided to cheat. It has been reported that the decision to cheat
 2 CARB, and other regulators worldwide was an “open secret” in Volkswagen’s engine development
 3 department,⁴ as it was necessary for the “EA 189 engine to pass U.S. diesel emissions limit
 4 [including California’s] within the budget and time frame allotted.”⁵

5 33. All modern engines are integrated with sophisticated computer components to
 6 manage the vehicle’s operation, such as an electronic diesel control (“EDC”). The EDC used by
 7 Volkswagen in its TDI engine, including the TDI engine in Plaintiffs’ vehicle, is more formerly
 8 referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”). The EDC Unit 17 was tested,
 9 manufactured, and sold by Robert Bosch GMBH (“Bosch”). Upon its introduction, EDC Unit 17
 10 was publicly touted by Bosch as follows:

11 ... EDC17 ... controls every parameter that is important for effective,
 12 low-emission combustion.

13 Because the computing power and functional scope of the new EDC17
 14 can be adapted to match particular requirements, it can be used very
 15 flexibly in any vehicle segment on all the world’s markets. In addition
 16 to controlling the precise timing and quantity of injection, exhaust gas
 17 recirculation, and manifold pressure regulation, it also offers a large
 18 number of options such as the control of particulate filters or systems
 for reducing nitrogen oxides. The Bosch EDC17 determines the
 injection parameters for each cylinder, making specific adaptations if
 necessary. This improves the precision of injection throughout the
 vehicle’s entire service life. The system therefore makes an important
 contribution to observing future exhaust gas emission limits.⁶

19 34. EDC Unit 17 was widely used throughout the automotive industry, including BMW
 20 and Mercedes, to operate modern clean diesel engines. Bosch worked with each vehicle
 21 manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code to
 22 manage the vehicle’s engine operation.

23 35. With respect to Volkswagen’s TDI vehicles, including Plaintiffs’ vehicle, however,
 24 EDC Unit 17 was also used to enable Bosch and Volkswagen to surreptitiously evade emissions
 25 regulations. Bosch and Volkswagen worked together to develop and implement a specific set of

26 ⁴ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016),
<http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

27 ⁵ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek (Dec. 10, 2015),
<http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-toerated-breaches-rules>.

28 ⁶ See February 28, 2006, Bosch press release, “The brain of diesel injection: New Bosch EDC17 engine management
 system,” <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>

1 software algorithms for implementation in Volkswagen's TDI vehicles, which enabled Volkswagen
2 to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea injection rates (for
3 applicable vehicles).

4 36. When carmakers test their vehicles against CARB emission standards, they place
5 their cars on dynamometers (large rollers) and then perform a series of specific maneuvers prescribed
6 by federal regulations. Bosch's EDC Unit 17 gave Volkswagen the power to detect test scenarios
7 by monitoring vehicle speed, acceleration, engine operation, air pressure and even the position of
8 the steering wheel. When the EDC Unit 17's detection algorithm detected that the vehicle was on a
9 dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17
10 downgraded the engine's power and performance and upgraded the emissions control systems'
11 performance by switching to a "dyno calibration" to cause a subsequent reduction in emissions to
12 legal levels. Once the EDC Unit 18 detected that the emission test was complete, the EDC Unit 17
13 would then enable a different "road calibration" that caused the engine to return to full power while
14 reducing the emissions control systems' performance, and consequently, caused the car to spew the
15 full amount of NOx emissions out on the road, in excess of California's emissions standards.

16 37. Thus, in order to obtain the EOs necessary to sell its vehicles in California,
17 Volkswagen did not disclose, and affirmatively concealed, the presence of the test-detecting and
18 performance altering software code within the EDC Unit 17 from government regulators. In other
19 words, Volkswagen lied to the government, its customers, including Plaintiffs, and the public at
20 large.

21 38. Because the EOs were fraudulently obtained, and because all Volkswagen vehicles
22 equipped with the TDI engine did not conform to the specifications provided in the EO applications,
23 the vehicles, including Plaintiffs' vehicle, were never covered by valid EOs and, thus, were never
24 legal for sale, nor were they CARB compliant, as presented. Volkswagen hid these facts from
25 CARB, other regulators, consumers, and Plaintiffs, and it continued to sell and lease the vehicles to
26 the driving public, despite their illegality.

27 39. Volkswagen hid the fact of the defeat devices from CARB, such that the EOs were
28 fraudulently obtained. Volkswagen submitted EO applications that described compliant

1 specifications and concealed the dual-calibration strategy of the defeat device. In reality, the
 2 vehicles differed in material respects from the specifications described in the EO applications.

3 40. Because the EOs were fraudulently obtained, vehicles equipped with the TDI engine,
 4 including Plaintiffs' vehicle, were never covered by valid EOs and, thus, were never offered legally
 5 for sale. Volkswagen hid these facts from CARB, and consumers, including Plaintiffs, and it
 6 continued to sell and lease the vehicles to the public, including Plaintiffs, despite their illegality.

7
 8 **Volkswagen's "Clean" Diesel Advertising Campaign**

9 41. While secretly using defeat devices to bypass California emission testing,
 10 Volkswagen publicly declared a landmark victory – touting that it had successfully optimized its
 11 engines to maintain legal emissions, while simultaneously enjoying the cost savings and
 12 convenience factors of a lean NO_x trap system. Volkswagen claimed it accomplished this by
 13 monitoring and adjusting combustion conditions and using a two-stage exhaust gas recirculation
 14 system to reduce initial emissions, while neutralizing the remaining ones with a lean NO_x trap to
 15 comply with California law. Volkswagen branded and advertised this purportedly revolutionary
 16 technology to American consumers as "CleanDiesel" TDI technology.

17 42. Volkswagen's "clean" diesel campaign was built upon a lie. Indeed, the TDI
 18 equipped vehicles were so "dirty" that they could not pass the minimum emission standards in
 19 California, and Volkswagen had to lie in order to sell them in the California. But, of course,
 20 Volkswagen marketed and sold these vehicles without ever disclosing to consumers that they were
 21 unlawful to sell or drive due to their high levels of NO_x emissions.

22 ///

23 ///

24 43. Volkswagen's "clean" diesel campaign was its key selling point for consumers
 25 increasingly concerned about the environment. Its marketing mission was to "get clean-diesel power
 26 the recognition it deserves as a true 'green' technology," thereby growing Volkswagen's market
 27 share to match its lofty goals. The objective was to change the way consumers thought of diesel
 28 technology, by replacing the mental image of sulfur emissions amid clouds of thick soot with that

1 of heightened efficiency and reduced CO₂ emissions. In fact, the Volkswagen website stated: “This
 2 ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel realities no longer apply.
 3 Enter TDI “clean” diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency.
 4 We’ve ushered in a new era of diesel.”

5 44. Dubbing these diesel engines as “CleanDiesel” was a symptom of the brazen
 6 arrogance underlying the fraud. Volkswagen’s entire marketing campaign, from the branding of the
 7 products to the advertisements, focused on convincing consumers that the TDU equipped vehicles
 8 were not merely compliant with California emission regulations, but that they exceeded them. This
 9 deception culminated in a Guinness World Record attempt in a 2013 Volkswagen Passat TDI, which
 10 ironically won an award for “lowest fuel consumption—48 U.S. states for a non-hybrid car.”

11 45. Volkswagen professed that its diesel-based technology was equal or superior to
 12 hybrid and electric options offered by its competitors. As described by Mark Barnes (COO of
 13 Volkswagen America) when asked, “What is the advantage of a diesel over a hybrid?”

14 It’s a fantastic power train. It gives very good fuel economy. It’s
 15 also good for the environment because it puts out 25% less
 16 greenhouse gas emissions than what a gasoline engine would. And
 17 thanks to the uniqueness of the TDI motor, it cuts out the particulate
 18 emissions by 90% and the emissions of nitrous oxide are cut by
 19 95%. So, a very very clean running engine. Clean enough to be
 20 certified in all 50 states. It’s just like driving a high-powered
 21 gasoline engine so you are not giving up one bit of the driving
 22 experience that you’d expect from a regular gasoline engine.

23 46. Facing skepticism, Barnes had a ready, if imaginative, response to the question, “How
 24 do you re-brand something that’s dirty like diesel as something that’s green?”

25 The way we’ve gone about it is through a number of
 26 communication pieces. One of them we’ve used is TDI Truth &
 27 Dare. It is a very good website that compares some older diesels
 28 versus the current TDI clean diesel. And one of the things we do is
 we put coffee filters over the exhaust pipes of both cars. We let
 them run for five minutes and after they are done, we take them off
 and the older diesel product (not a VW diesel) has a round sooty
 spot on that coffee filter. Ours is very clean. In fact they actually
 make coffee out of the filter that was attached to the Volkswagen
 clean diesel tail pipe and they drink it.

47. Volkswagen also advertised that its vehicles performed better on the road than in test

conditions, touting in a 2008 press release: “While the Environmental Protection Agency estimates the Jetta TDI at an economical 29 mpg city and 40 mpg highway, Volkswagen went a step further to show real world fuel economy of the Jetta TDI. Leading third-party certifier, AMCI, tested the Jetta TDI and found it performed 24 percent better in real world conditions, achieving 38 mpg in the city and 44 mpg on the highway.” This discrepancy between the EPA certified mpg figures (which are reverse calculated based on vehicle performance on a dynamometer) and the real world mpg figures came about because, in real world driving, Volkswagen’s defeat device disabled the full functioning of the NO_x trap system exhaust gas after treatment control (which needed to burn more fuel to work properly), thereby decreasing vehicle operating costs at the expense of massively increased NO_x emissions.

48. Volkswagen distinguished the TDI “clean” diesel engines from other, “stinky, smoky, sluggish” diesels, proclaiming its “eco-conscious” status and of course failing to disclose that the TDI equipped vehicles were “dirty” themselves. These messages were prevalent in Volkswagen’s extensive marketing campaign.

49. Some advertisements specifically emphasized the low emissions and eco-friendliness of the vehicles. Others touted the combination of fuel efficiency and power. Yet others addressed the full package, implying that in contrast to the “stinky, smoke, and sluggish” diesel vehicles of old, Volkswagen’s new diesel vehicles were clean, efficient, and powerful all at once.

50. In addition, Volkswagen directed consumers to the www.clearlybetterdiesel.org website, which partnered with affiliates Audi and Porsche, as well as Bosch, Mercedes, and BMW. This website touted the benefits of newly developed diesel technology as “clean” and environmentally friendly. Although it has been scrubbed of all content, the website previously contained false and misleading statements, such as:

The term “Clean Diesel” refers to innovative diesel engine technology, as well as the latest diesel fuel for vehicles. In contrast to traditional diesel, Clean Diesel is superior, since both the new generation of engines and the fuel itself meet the strictest emission regulations in the U.S. (issued by the state of California). Clean Diesel fuel contains less than 15 parts per million of Sulphur; our Clean Diesel partner vehicles deliver on average 18% higher fuel efficiency while reducing CO₂ emissions when compared to corresponding gas models. Since Clean Diesel is not only cleaner but also more fuel-

efficient, the new Clean Diesel vehicles are friendlier to both the environment and drivers' wallets throughout the U.S.

51. Volkswagen's partnership with www.clearlybetterdiesel.org falsely or misleadingly portrayed the TDI diesel engine as an environmentally friendly, low emissions choice for discerning and socially responsible consumers.

52. Volkswagen also produced a series of TV advertisements for the U.S. market, including California, intended to debunk myths about diesel engines. One ad, titled, "Three Old Wives Talk Dirty," featured three elderly women debating whether diesels, though "beautiful," are dirty vehicles. To ostensibly debunk the "Old Wives' Tale" that diesel produced dirty exhaust and hazardous emissions, one of the women held her white scarf to the exhaust to convince the passengers that the exhaust was environmentally friendly and not, in fact, dirty. She removes the scarf and asks her friends, "see how clean it is?" Like others in Volkswagen's "clean" diesel campaign, this ad falsely or misleadingly portrayed the exhaust emissions from the TDI equipped vehicles as clean and safe. In reality, TDI equipped vehicles actually emitted invisible and extremely hazardous levels of NOX.

53. These themes extended to print brochures at dealerships and to VW's website. The brochures emphasized that VW's "clean" diesel was "clean," "green," and low emission. For example, a "2012 Volkswagen Family" brochure for all VW models, states:

Let TDI "clean" diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to the TDI technology that uses a direct injection system and runs on ultralow-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines. On most models, you can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

54. Similarly, a "2013 Volkswagen Family" brochure, applicable to all models, states:

When you've had your fill of filling stations, hit the road in your TDI "clean" diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels. Far and away, it's our best diesel yet

1 55. And a 2012 “Volkswagen TDI “clean” diesel” brochure for the six models of
2 Volkswagen TDIs then on the market (Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg)
3 states:

4 These are not the kind of diesel engines that you find spewing
5 sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet
6 the strictest EPA standards in the U.S. Plus, TDI technology helps
7 reduce sooty emissions by up to 90%, giving you a fuel-efficient
8 and eco-conscious vehicle.

9 ...

10 Think beyond green. TDI represents one part of the Volkswagen
11 Think Blue initiative, our goal of creating and encouraging eco-
12 conscious products and behaviors. Join us in being more
13 responsible on the road and on the planet.

14 56. Further, a 2010 TDI Jetta and Jetta SportWagen brochure states:

15 The 2.0L “clean” diesel engine gives you 140hp and 236 lbs-ft of
16 torque. This engine is the toast of Europe for its quickness, low
17 emissions, and fuel efficiency—a staggering 38 city/44 highway
18 mpg (automatic) based on real-world AMCI-certified testing (30
19 city/42 highway mpg. EPA estimates).

20 ...

21 Jetta TDI “clean” diesel offers fuel efficiency, power, performance,
22 and a \$1,300 tax credit from Uncle Sam because it qualifies as an
23 Advanced Lean Burn Credit. Or, in other words, lean, mean, cleaner
24 burning machines. Volkswagen believes in delivering a no-
25 compromise German-tuned auto that performs, and still leaves a
26 small carbon footprint. The Volkswagen TDI engine is cleaner than
27 conventional diesels, emitting as much as 95% less soot than
28 previous diesel engines, as well as a reduction in oxides of nitrogen
and sulfur. It’s powerful, with the kind of low-end torque that racers
and tuners demand. It’s efficient, using a turbocharger and smart
exhaust design to burn fuel more effectively. So much so, in fact,
that Volkswagen was the first automaker to make clean diesel cars
certified in all 50 states. And best of all, it will help save you money
with an out-of-this-world AMCI-estimated mileage of 38 city/44
highway mpg (automatic) and over 594 miles on a single tank of
fuel.

 There’s even a Jetta SportWagen TDI “clean” diesel, with the same
astonishing clean diesel technology, plus a whopping 66.9 cubic feet
of cargo room.

57. And a Volkswagen 2011 Golf TDI brochure states:

 Regardless of which Golf model you get, you’ll be seeing a lot
fewer gas stations and a lot more road. The 2.5L Golf comes

standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg. Opt for the Golf TDI model and you'll enjoy a turbocharged clean diesel engine with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That's up to 609 miles per tank. And you'll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet. So whether you're in the market for IntelliChoice's 2010 "Best Overall Value Compact Car over \$17,000," or you want to go for a variation on that theme and get the ever-popular TDI model, you can't go wrong. In fact, you can go very right for a long, long time.

58. A Volkswagen 2012 Passat TDI Brochure states:

Let the Passat TDI "clean" diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines. You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

...

The TDI "clean" diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.

59. A Volkswagen 2013 Beetle TDI brochure states:

Start the TDI® "clean" diesel model and hear the surprisingly quiet purr of the first clean diesel Beetle, designed for both power and efficiency.

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60. A Volkswagen 2014 Beetle TDI brochure states:

2.0L TDI "clean" diesel engine. Engineered with the idea that less is more. The Beetle TDI has lower CO2 emissions compared to 84% of other vehicles. So every getaway you make will be a cleaner one.

61. A Volkswagen 2014 TDI Touareg brochure states:

3.0L TDI "clean" diesel engine. Engineered with the idea that less is more. The Touareg TDI has lower CO2 emissions compared to 88% of other vehicles. So every getaway you make will be a clean one.

Volkswagen Profit's from Selling Vehicle's Equipped with the Defeat Device

62. Volkswagen's massive advertising campaign for the TDI equipped vehicles proved highly successful, as Volkswagen took a commanding lead in U.S. diesel vehicle sales. Volkswagen's diesel vehicles were profiled on environmental websites and blogs as the responsible choice, relying on Volkswagen's representations of high mileage and low emissions.

63. And the success of Volkswagen's advertising campaign resulted in skyrocketing sales. In 2007, Volkswagen sold 230,572 cars in the United States and a negligible number of those were diesel vehicles. In fact, in 2007 only approximately 16,700 light-duty diesel vehicles were sold in the United States. As Volkswagen released its "clean" diesel lineup and fraudulent advertising campaign, sales of TDI vehicles grew dramatically, from 43,869 in 2009 to a peak of 111,285 in 2013. This largely accounted for Volkswagen's sales growth to over 400,000 sales in 2013, nearly double the sales in 2007. Likewise, the TDI vehicles contributed significantly to Audi's growth from 93,506 sales in 2007 to 182,011 in 2014.

64. Volkswagen reaped considerable benefit from their fraud, charging premiums of thousands of dollars for the "clean" diesel models of the TDI vehicles.

65. Volkswagen also engaged in an aggressive lobbying campaign for federal tax credits for the TDI vehicles, akin to the credits offered for electric cars. These efforts were met with some success, as many of the TDI vehicles were deemed eligible for federal income tax credits in order to spur "clean" diesel technology. In fact, at least \$78 million was earmarked for TDI Jetta buyers in 2009 and 2010.

66. Volkswagen's fraudulent scheme started to unravel approximately five years after Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of commerce. In May 2014, West Virginia University's Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation ("ICCT"), which found that certain of the TDI equipped vehicles' real world NOX and other emissions exceeded the allowable CARB emission standards.

67. The ICCT researchers had been comparing the real-world performance of "clean" diesel vehicles in Europe with reported results and noted numerous discrepancies. Since California

1 emission regulations were significantly more stringent than its European counterparts, the ICCT
2 sought to test the equivalent California “clean” diesel cars, presuming that they would run cleaner.
3 West Virginia University’s team of emissions researchers was a qualified and enthusiastic partner,
4 as they had already been engaged in the study of heavy truck emissions.

5 68. Shockingly, the study showed that, contrary to testing lab results, real world driving
6 of Volkswagen “clean” diesel vehicles produced levels of NO_x up to 40 times higher than legal limits
7 promulgated by the CARB.

8 69. The results of this study prompted an immediate investigation by CARB, who
9 demanded an explanation from Volkswagen. Despite knowing that the TDI vehicles contained
10 emission systems designed for fraudulent purposes—and defeat devices intentionally designed to
11 comply with California emission standards on a test bench but not under normal driving operation
12 and use—Volkswagen failed to come clean. Instead, Volkswagen denied the allegations and blamed
13 faulty testing procedures.

14 70. In December 2014, Volkswagen issued a recall purportedly to update emission
15 control software in the TDI vehicles, and CARB conducted follow-up testing of the TDI vehicles in
16 the laboratory and during normal road operation. CARB attempted to identify the source and nature
17 of the TDI vehicles’ poor performance and determine why their on-board diagnostic systems did not
18 detect the increased emissions. None of the technical issues suggested by Volkswagen adequately
19 explained the NO_x test results as confirmed by CARB.

20 71. Dissatisfied with Volkswagen’s explanations, California government officials finally
21 threatened to withhold the emissions certifications for Volkswagen’s 2016 diesel vehicles until it
22 adequately explained the anomaly of the higher emissions. Then, and only then, did Volkswagen
23 finally relent and start to lift the curtain on its fraudulent scheme.

24 72. On September 3, 2015, Volkswagen officials finally disclosed at a meeting with
25 CARB that it had installed a sophisticated software algorithm on the 2.0-liter TDI vehicles, which
26 could detect when the car was undergoing emission testing on a test bench and switch the car into a
27 cleaner running mode.
28

1 manufacturer; Plaintiffs relied on the statements made during the sales process by Volkswagen's
 2 agents, on window stickers, and within the marketing brochures provided by Volkswagen regarding
 3 it being a "green" vehicle. However, Volkswagen and its authorized agents did not publicly or
 4 privately disclose to Plaintiffs any information about the defeat devices. These omissions were
 5 material to Plaintiffs' decision to purchase the vehicle. Had Volkswagen and/or its authorized agents
 6 publicly or privately disclosed the existence of the defeat device and the truth about the TDI's
 7 emissions before Plaintiffs purchased the vehicle, Plaintiffs would have been aware of such
 8 disclosures, and would not have purchased the vehicle.

10 **FIRST CAUSE OF ACTION**

11 **(Fraud in the Inducement – Intentional Misrepresentation) – *Against Manufacturer***

12 ***Defendant ONLY***

13 80. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth
 14 herein.

15 81. Defendant Volkswagen made multiple public representations about quantifiable
 16 qualities of the TDI engine, including statements regarding its emissions, its compliance with
 17 government regulations, fuel efficiency, power, and drivability.

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20 82. Defendant Volkswagen drafted, produced, and distributed marketing brochures to the
 21 public containing factual representations about the TDI engine. Defendant Volkswagen also
 22 engaged in a nationwide television and print advertising campaigns containing factual
 23 representations about the TDI engine. Volkswagen's marketing the Vehicle represented the TDI
 24 engine's "green" technology, as further described in paragraphs 38-58, above.

25 83. Unfortunately, the Vehicle, as delivered to Plaintiffs, was equipped with a "defeat
 26 device" that was specifically designed to circumvent government environmental regulations,
 27 including California emissions standards, and to defraud the public at large, including the Plaintiffs.

(Fraud in the Inducement – Concealment) – *Against Manufacturer Defendant ONLY*

90. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding and succeeding paragraphs as though herein fully restated and re-alleged.

91. Defendant Volkswagen and its agents intentionally concealed and failed to disclose facts relating to TDI defeat device and the Subject Vehicle's non-conformance with California emission standards.

92. Defendant Volkswagen was the only party with knowledge of the TDI defeat device because that knowledge came from an intentional scheme to defraud government regulators and consumers, including CARB and the Plaintiffs. None of this information was available to the public, nor did Defendant publicly or privately disclose any of the information to Plaintiffs. Volkswagen had exclusive knowledge of the defect.

93. Defendant Volkswagen actively concealed information from the public, preventing Plaintiffs from discovering any of the concealed facts regarding the defeat device and the truth about the TDI engine emissions.

94. Prior to the date of sale, on the date of sale, and on the date of each of the repair attempts, Defendant had an opportunity to disclose to Plaintiffs, but instead concealed from and failed to disclose to Plaintiffs, any of the known irreparable issues with the Vehicle, including the existence of the TDI defeat device.

95. Defendant Volkswagen intended to deceive Plaintiffs by concealing the existence of the TDI defeat device, in an effort to sell the Vehicle at a maximum price.

96. Prior to the sale of the Vehicle Defendant Volkswagen knew that the TDI defeat device was intended to use it to defraud CARB and the general public, including Plaintiffs. Defendant Volkswagen specifically designed the TDI defeat device to fraudulently circumvent California emissions regulations and trick the public into purchasing vehicles that could not deliver on their emissions promises. Defendant Volkswagen intended the Vehicle to be sold to the public, including the Plaintiffs with the fraudulent defeat device.

1 105. The Vehicle Code, section 11713, et seq. regulates the advertising and sale of motor
2 vehicles.

3 106. In violation of the foregoing statutes, Volkswagen has engaged or attempted to
4 engage in the following unfair methods of competition and unfair or deceptive acts or practices and
5 these methods, acts, or practices were undertaken in a transaction intended to result or which resulted
6 in the sale of goods or services to a consumer.

7 107. Plaintiffs relied on Volkswagen's representations in purchasing the vehicle.

8 108. The foregoing wrongful acts violate the following subdivisions of the CLRA: (5)
9 Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses,
10 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,
11 affiliation, or connection which he or he does not have; (7) Representing that goods or services are
12 of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are
13 of another; (9) Advertising goods or services with intent not to sell them as advertised; (14)
14 Representing that a transaction confers or involves rights, remedies, or obligations which it does not
15 have or involve, or which are prohibited by law; (16) Representing that the subject of a transaction
16 has been supplied in accordance with a previous representation when it has not. (Civ. Code, § 1770,
17 subd. (a))
18

19 109. Volkswagen has violated the Consumers Legal Remedies Act (CLRA), California
20 Civil Code sections 1770(a) (7), (9), (14), and (16), by engaging in unfair methods of competition
21 and unfair and deceptive acts and practices in connection with transactions that were intended to
22 result and did result in the sale and lease of goods to consumers.

23 110. In connection with the sale of the Subject Vehicle to Plaintiffs, Volkswagen failed to
24 disclose—at the point of sale or otherwise— material information about the Subject Vehicle—
25 namely, that the Subject Vehicle is equipped with a defeat device intended to defeat emissions tests
26 and regulations, including California emissions standards.

27 111. As a direct and proximate result of Volkswagen's conduct, Plaintiffs have been
28

1 harmed in that Plaintiffs purchased a vehicle they otherwise would not have, paid more for the
2 Subject Vehicle than they otherwise would, and is left with a vehicle of diminished value and utility
3 because of the defect. Meanwhile, Volkswagen has sold more vehicles equipped with a TDI engine
4 with the defeat device than it otherwise could have and charged inflated prices for vehicles equipped
5 with a TDI engine with the defeat device, unjustly enriching itself thereby.

6 112. Volkswagen and its authorized dealership represented to Plaintiffs that by entering
7 into the Retail Installment Sales Contract to purchase the Vehicle, Plaintiffs were securing the
8 benefit of a warranty by Volkswagen to maintain the utility and performance of the vehicle,
9 including performance in compliance with California's emissions regulations, or to provide
10 compensation in the event of a failure in utility or performance. Volkswagen was aware of its
11 intentional scheme to defraud consumers, such as Plaintiffs, and government bodies, such as CARB,
12 and its inability to repair the vehicle to conform to the specifications in advertisements and the
13 warranty. Volkswagen represented that the sales transaction conferred an obligation that it did not
14 involve in violation of the CLRA.

15 113. Pursuant to the Consumer Legal Remedies Act, Civil Code, section 1750 et seq., on
16 February 8, 2017, Plaintiffs notified Volkswagen in writing by certified mail, return receipt
17 requested, of the alleged violations and demanded that Volkswagen correct, repair, replace, or
18 otherwise rectify the violations.

19 114. Volkswagen failed to offer a compliant correction within 30 days of being notified of
20 its violation. Plaintiff amended the complaint to request monetary damages.

21 115. In committing the above wrongful acts, Volkswagen was guilty of oppression, fraud,
22 or malice, because the acts were perpetrated pursuant to Volkswagen's plan, scheme, or company
23 policy to deceive, defraud, mislead, or take unfair advantage of buyers of Volkswagen's vehicles
24 equipped with the TDI engine with a defeat device.

25 116. The foregoing fraudulent and wrongful acts by Volkswagen, as alleged above, were
26 authorized and ratified by Volkswagen's officers, directors, and/or managers, including, but not
27
28

1 limited Volkswagen's director of marketing. Volkswagen's agents or employees also committed
2 the wrongful acts set forth above with the foregoing knowledge, authorization, approval, direction,
3 or ratification of an officer, director, or managing agent of Volkswagen pursuant to an implicit or
4 explicit company plan, scheme, or policy regarding the advertising and sale of Volkswagen vehicles
5 equipped with the defeat device. Alternatively, the aforementioned wrongful acts were committed
6 by an officer, director, or managing agent of Volkswagen.

7
8 117. As a direct result of the Volkswagen's acts and/or omissions, Plaintiffs have been
9 injured as set forth herein.

10 118. Plaintiffs seek the entry of a preliminary and permanent injunction requiring
11 Volkswagen to disclose fully, prior to the sale, the inherent engine defects in vehicles equipped with
12 the TDI engine with a defeat device and the defects buyers can expect to experience with these
13 vehicles and desist from selling these vehicles without the foregoing pre-sale disclosure. Also,
14 Plaintiffs seek an injunction issued to prevent Volkswagen from refusing to acknowledge its scheme
15 to intentionally defraud consumers, including Plaintiffs, and the California CARB.

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18 119. Injunctive relief is necessary in this case because (1) the legal remedies are
19 inadequate and (2) the state has inherent power to halt deceptive conduct. Without injunctive relief,
20 Volkswagen will continue to victimize California buyers of Volkswagen vehicles equipped with the
21 TDI engine with defeat device. The repetition of Volkswagen's deceptive sales policies will result
22 in irreparable harm. Without injunctive relief, Volkswagen can simply offer damages to the
23 deceived customers who use it in order to continue their deceptive practices. Additionally, injunctive
24 relief is specifically authorized by the Consumers Legal Remedies Act to eradicate unfair and
25 deceptive business practices.

26 120. The foregoing injunction is sought to protect the public from these predatory
27 methods, acts, or practices.
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121. Plaintiffs also seek attorney fees and costs.

FOURTH CAUSE OF ACTION

(Violation of the Song-Beverly Act – Breach of Implied Warranty) – *Against All Defendants*

122. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding and succeeding paragraphs as though herein fully restated and re-alleged.

123. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the "Act") Civil Code sections 1790 *et seq.* the vehicle constitutes "consumer goods" used primarily for family or household purposes, and Plaintiffs have used the vehicle primarily for those purposes.

124. Plaintiffs are a "buyer" of consumer goods under the Act.

125. Defendant Ford is a "manufacturer" and/or "distributor" under the Act.

126. Volkswagen and its authorized dealership at which Plaintiffs purchased the Vehicle had reason to know the purpose of the Vehicle at the time of sale of the Vehicle. The sale of the Vehicle was accompanied by an implied warranty of fitness.

127. The sale of the Vehicle was accompanied by an implied warranty that the Vehicle was merchantable pursuant to Civil Code section 1792.

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128. The Vehicle was not of the same quality as those generally acceptable in the trade because it was equipped with a defeat device.

129. The Vehicle was not fit for the ordinary purpose for which such goods are used because it was equipped with a defeat device.

130. The Vehicle did not measure up to the promises or facts stated on the container or label because it was equipped with a defeat device.

131. The Vehicle did not measure up to the promises or facts stated on the container or label because it was equipped with defeat device intended to deceive emissions tests and regulators, including CARB and California emissions standards.

132. Plaintiffs are entitled to justifiably revoke acceptance of the Vehicle under Civil Code section 1794, *et seq.*; Plaintiffs hereby revoke acceptance of the Vehicle.

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/s/ Alastair Hamblin
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WHITNEY S. GRAVEL and
MIKE GRAVEL

PROOF OF SERVICE
(F.R.C.P. Rule (b)(2))

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1801 Century Park East, Suite 2300, Los Angeles, CA 90067.

I served the foregoing document described as:

FIRST AMENDED COMPLAINT

Said document was served on the interested parties in this action, by placing true copies thereof enclosed in sealed envelopes, with postage prepaid, addressed as follows:

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XX BY MAIL: I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at a Postal Service collection box at Los Angeles, California, in the ordinary course of business. The envelope was sealed and placed for collection that same day following ordinary business practices, addressed to the above-referenced attorney.

XX BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 17, 2017 at Los Angeles, California.

/s/ Era Mitchell
ERA MITCHELL